

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ACCREDITED HOME LENDERS, INC.

Plaintiff,

No. C07-272MJP

V.

ORDER REMANDING CASE

CITY OF SEATTLE,

Defendant.

This matter comes before the Court on Defendant City of Seattle's motion for judgment on the pleadings. (Dkt. No. 8.) The City requests that the Court dismiss Plaintiff Accredited Homes' federal takings and § 1983 claims as unripe and either dismiss or remand Plaintiff's remaining state law takings claims. Accredited Homes opposes the motion. (Dkt. No. 13.) Having considered the City's motion, Plaintiff's response, the City's reply (Dkt. No. 15), the City's supplemental memorandum (Dkt. No. 24), and all documents submitted in support thereof, the Court GRANTS IN PART the City's motion and REMANDS Plaintiff's action to King County Superior Court.

Background

This case involves a small piece of property, referred to as “Lot 7,” located at 7233 South Taft Street in Seattle’s Rainier Valley. Plaintiff Accredited Homes acquired Lot 7 on December 3, 2004, from one of its defaulting borrowers, Ms. Penny Tobacco. (Compl., Ex. 1.) Ms. Tobacco owned Lot 7 in conjunction with Lot 8, a lot immediately to the east of Lot 7. In 2001, Ms. Tobacco obtained a permit from the City to move the house that straddled the lot line between Lot 7 and Lot 8 to a completely different lot. (Compl., Ex. 3.) One year later, Ms. Tobacco obtained a permit to build

1 a new house on the same combined building site (straddling Lots 7 & 8). (Compl., Ex. 4.)
 2 Nevertheless, Ms. Tobacco moved the original structure onto Lot 7 and built a new house on Lot 8.
 3 In moving the original house onto Lot 7, Ms. Tobacco placed the house on supports. (Compl. ¶ 10.)
 4 Ms. Tobacco quitclaimed the new Lot 8 house to a third party in December 2002. (Compl., Ex. 5.)
 5 Prior to selling Lot 8, Ms. Tobacco requested a preliminary opinion from the City's
 6 Department of Planning and Development ("DPD") regarding whether Lot 7 was buildable. Lot 7 is
 7 approximately 3,360 sq. ft. in area, which is less than the 5,000 sq. ft. lot area required for its single-
 8 family zoning designation. (Compl., Ex. 10, Ex. G.) In November 2002, DPD issued a preliminary
 9 opinion letter that concluded that Lot 7 did not meet the minimum area requirement and did not meet
 10 any of the four possible exceptions to the area requirement. (*Id.*) The letter stated that the opinion
 11 expressed was a preliminary one and that Ms. Tobacco could challenge the opinion through the
 12 administrative code interpretation process. (*Id.* at 6.) Neither Ms. Tobacco, nor Accredited Homes,
 13 pursued any further administrative remedies. Ms. Tobacco and Accredited Homes also did not seek a
 14 variance, which, if granted, would have relieved them from strict compliance with specific code
 15 requirements.

16 On May 19, 2005, the City issued a Notice of Violation of the city's vacant building standards
 17 to Accredited Homes regarding Lot 7. The notice indicated that the property was in violation of
 18 provisions of the Seattle Municipal Code, and that certain actions needed to be taken by June 26,
 19 2005, to bring the property into compliance. (Compl., Ex. 8.) Accredited Homes did not appeal the
 20 notice or take any action to address the violations.¹

21 On August 23, 2005, the City commenced a code enforcement action against Accredited
 22 Homes in Seattle Municipal Court; the City moved for summary judgment and abatement of the
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25 Accredited Homes suggests that it entered into negotiations with the City after receiving the
 26 Notice. But Accredited Homes has offered no evidence to support that assertion. Likewise,
 Accredited Homes suggests, without any evidentiary support, that the City prohibited it from
 remedying some of the violations on Lot 7. Whether Accredited Homes' assertions are correct is
 irrelevant to the disposition of this motion.

1 violations on December 5, 2006. (Compl., Ex. 9.) On January 22, 2007, Accredited Homes filed suit
 2 against the City in King County Superior Court, alleging a Fifth Amendment claim, a claim under 42
 3 U.S.C. § 1983, and a state inverse condemnation claim. (Compl. at 6.) On February 21, 2007, the
 4 City removed the King County case to this Court. (Dkt. No. 1.) On April 24, 2007, the City brought
 5 this motion to dismiss, arguing that Plaintiff's federal takings claims are not ripe. (Dkt. No. 8.)

6 Discussion

7 I. Standard for Fed. R. Civ. P. 12(c) Motion for Judgment on the Pleadings

8 Defendant has brought a Fed. R. Civ. P. 12(c) motion for judgment on the pleadings. Federal
 9 Rule 12(c) states: "After the pleadings are closed but within such time as not to delay the trial, any
 10 party may move for judgment on the pleadings." If procedural defects are asserted in a Rule 12(c)
 11 motion, the district court will apply the same standards for granting the appropriate relief or denying
 12 the motion as it would have employed had the motion been brought prior to the defendant's answer
 13 under Rules 12(b)(1), 12(b)(6), 12(b)(7), or 12(f). See 5C Charles Alan Wright & Arthur R. Miller,
 14 Federal Practice and Procedure § 1367, at 218 (3d ed. 2004).

15 Federal Rule 12(b)(1) allows a party to raise the defense that the court lacks jurisdiction over
 16 the subject matter of a claim. "A motion to dismiss for lack of subject matter jurisdiction may either
 17 attack the allegations of the complaint or may be made as a 'speaking motion' attacking the existence
 18 of subject matter jurisdiction in fact." Thornhill Publ'g Co. v. Gen. Tel. & Elecs., 594 F.2d 730, 733
 19 (9th Cir. 1979). When a Rule 12(b)(1) motion attacks the existence of subject matter jurisdiction in
 20 fact, no presumption of truthfulness attaches to plaintiff's allegations. Id. "[T]he district court is not
 21 restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony,
 22 to resolve factual disputes concerning the existence of jurisdiction." McCarthy v. United States, 850
 23 F.2d 558, 560 (9th Cir. 1988). The burden of proof on such a Rule 12(b)(1) motion is on the party
 24 asserting jurisdiction. Thornhill Publ'g, 594 F.2d at 733.

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II. Ripeness

Defendant moves to dismiss Plaintiff's Fifth Amendment and § 1983 claims as unripe. Under clear Supreme Court precedent, a federal takings claim is not ripe until two prerequisites are met: (1) the takings plaintiff has obtained a “final decision” regarding the development potential of her property; and (2) the takings plaintiff has been denied just compensation by the state. Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186, 194 (1985). Defendant argues that Accredited Homes’ action is premature under both prongs of the Williamson County test.

A. Just Compensation

9 The City argues that Plaintiff's federal claims are not ripe because Plaintiff has not been
10 denied compensation under state law. See Williamson County, 473 U.S. at 194. “[I]f a state provides
11 an adequate procedure for seeking just compensation, the property owner cannot claim a violation of
12 the Just Compensation Clause until it has used the procedure and been denied just compensation.” Id.
13 Washington has an adequate procedure for reimbursement for the taking of property. Macri v. King
14 County, 126 F.3d 1125, 1129 (9th Cir. 1997) (citing Guimont v. Clarke, 121 Wn.2d 586, 594
15 (1993)). Accredited Homes has not yet used the Washington procedure because the City removed
16 this case before it was able to do so. Thus, Accredited Home’s Fifth Amendment claim is not ripe.
17 See Macri, 126 F.3d at 1129. Because Plaintiff’s § 1983 claim is based on violations of the Fifth
18 Amendment,² that claim is also unripe.

19 Plaintiff argues that Williamson County and Macri do not apply in this case because the
20 Washington constitution provides stronger takings protections than the federal constitution.
21 Specifically, Plaintiff points to the fact that the Washington constitution requires just compensation
22 before any property is taken, whereas the federal constitution does not require a pre-payment to avoid
23 a taking. Plaintiff's argument flies in the face of Macri, a Ninth Circuit case addressing Washington

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Although Plaintiff's complaint does not specify the federal law basis for the § 1983 claim, the Court assumes that Plaintiff's § 1983 claim is based on the City's alleged violation of the Fifth Amendment. Plaintiff's complaint states no other federal law, the violation of which would serve as a basis for a § 1983 claim.

1 takings law and applying the Williamson County ripeness test. Macri is directly on point. This Court
 2 has no authority to disregard on-point Ninth Circuit and Supreme Court precedent. Macri and
 3 Williamson County control here.

4 Defendant requests that the Court dismiss Plaintiff's federal claims. Although the Court may
 5 dismiss those claims as unripe, see Macri, 126 F.3d at 1129, the Court may also remand for lack of
 6 subject matter jurisdiction. See 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears
 7 that the district court lacks subject matter jurisdiction, the case shall be remanded."). Remand is
 8 appropriate in light of a recent Supreme Court case, San Remo Hotel v. City and County of San
 9 Francisco, 545 U.S. 323 (2005). Before San Remo, courts, like Macri, held that a federal takings
 10 claim need not be remanded with the corollary state inverse condemnation claim because "the failure
 11 of a plaintiff to raise a federal takings claim in state court does not preclude that plaintiff from
 12 bringing a subsequent federal takings claim in federal court." Macri, 126 F.3d at 1130. But in San
 13 Remo, the Supreme Court held that ordinary preclusion rules apply to state court inverse
 14 condemnation judgments even when a takings case is forced into state court by the Williamson
 15 County compensation-ripeness rule. San Remo, 545 U.S. at 346-47. Thus, under San Remo, the
 16 failure to simultaneously pursue federal claims in state court with the state inverse condemnation
 17 claims may preclude a plaintiff from later pursuing her federal claims in federal court. As another
 18 district court recently concluded, "[g]iven the holding of San Remo, it is more appropriate, in the
 19 interest of fairness, to remand Plaintiffs' takings claims along with Plaintiffs' state inverse
 20 condemnation claims so that Plaintiffs may pursue those claims simultaneously." Doney v. Pacific
 21 County, C07-5123RJB, 2007 U.S. Dist. LEXIS 34071, at *17 (W.D. Wash. May 9, 2007).

22 The Court concludes that remand of Plaintiff's federal claims is appropriate. Thus, the Court
 23 REMANDS Plaintiff's Fifth Amendment takings and § 1983 claims to King County Superior Court.
 24 In addition, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state
 25 claim. A court may remand pendent claims when "in exceptional circumstances, there are other
 26 compelling reasons for declining jurisdiction." 28 U.S.C. § 1337(c)(4). Where declining jurisdiction

1 “best accommodates the values of economy, convenience, fairness, and comity,” the Court may
 2 decline supplemental jurisdiction under subsection (c)(4). Executive Software N. Am. v. U.S. Dist.
 3 Court, 24 F.3d 1545, 1557 (9th Cir. 1994). That is undoubtedly the case here. Because the state
 4 court has jurisdiction over all of Plaintiff’s claims and because Plaintiff’s state claim must be decided
 5 under state law, it makes sense from comity, judicial economy, and convenience standpoints for that
 6 court to consider all of Plaintiff’s claims concurrently.³ Moreover, Plaintiff has expressed
 7 ambivalence as to whether this Court retains jurisdiction over the state law claim, and Defendant has
 8 requested remand or dismissal of the state law claim. Thus, remand of Plaintiff’s state inverse
 9 condemnation claim is also fair.

10 **B. Final Decision**

11 Because the Court concludes that Plaintiff’s federal claims are unripe under the “just
 12 compensation” prong of the Williamson County ripeness test, the Court need not consider whether
 13 Plaintiff’s claims are also unripe under the “final decision” prong.

14 **Conclusion**

15 Because the state court has not yet ruled on Plaintiff’s state inverse condemnation claim,
 16 Plaintiff’s Fifth Amendment and § 1983 claims are not ripe. Thus, the Court GRANTS IN PART
 17 Defendant’s motion for judgment on the pleadings and REMANDS Plaintiff’s federal claims. The
 18 Court declines to exercise supplemental jurisdiction over Plaintiff’s state law claim and therefore
 19 REMANDS that claim as well.

20 Dated this 2nd day of July, 2007.



21 _____
 22 Marsha J. Pechman
 23 United States District Judge

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25 The Court notes that, in terms of the “just compensation” prong of the Williamson
 26 County ripeness test, Plaintiff’s complaint was ripe as filed in King County Superior Court.
 It only became unripe upon removal. Although the removal was technically proper, the
 City has wasted precious judicial resources by removing this case to federal court and then
 immediately moving to dismiss on ripeness grounds.